

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35512/35513

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 475
	)	
Plaintiff-Respondent,	)	Filed: May 22, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
ROBERT C. PHELPS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

---

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. David C. Nye, District Judge.

Order reinstating previously suspended sentence, affirmed; judgment of conviction and sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

---

Before LANSING, Chief Judge; PERRY, Judge;  
and GRATTON, Judge

---

PER CURIAM

Robert C. Phelps pled guilty, in case no. 35513, to possession of methamphetamine, Idaho Code § 37-2732(c)(1). The district court withheld judgment and placed Phelps on supervised probation for five years. Phelps admitted to violating his probation and the district court imposed a unified sentence of five years, with two years determinate, and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended execution of the sentence and placed Phelps on probation for five years. Following additional probation violations, Phelps' probation was continued. Thereafter, Phelps pled guilty, in case no. 35512, to possession of methamphetamine, and the district court imposed a unified sentence of seven years, with two years determinate. Phelps' probation in case no. 35513 was subsequently

revoked and the suspended sentence ordered into execution, to run concurrent with the sentence in case no. 35512. On appeal, Phelps does not challenge the district court's decision to revoke probation in case no. 35513, but argues only that his sentence, in each case, was excessive.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we do not base our review upon only the facts existing when the sentence was imposed. Rather we examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *State v. Adams*, 115 Idaho 1053, 1055, 722 P.2d 260, 262 (Ct. App. 1989); *State v. Grove*, 109 Idaho 372, 373, 707 P.2d 483, 484 (Ct. App. 1985); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Therefore, the order directing execution of Phelps' previously suspended sentence in case no. 35513 and the judgment of conviction and sentence in case no. 35512 are affirmed.